

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EVART CHARLES CRAIN,

Defendant-Appellant.

---

UNPUBLISHED

March 1, 2005

No. 249475

Ingham Circuit Court

LC No. 02-000247-FH

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

PER CURIAM.

Defendant Evert Charles Crain appeals as of right from his jury trial conviction of first-degree home invasion.<sup>1</sup> We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

The complainant in this case arrived home from work in the late evening and was knocked to the floor of her apartment by a man she recognized as being a maintenance man for the apartment complex. She later identified Crain as being her assailant. After holding the complainant for approximately thirty minutes inside the apartment, Crain left after the complainant promised not to call the police.

At trial, defense counsel attempted to impeach the complainant's credibility by asking about previous statements she made during Crain's preliminary examination. In response, during his closing arguments the prosecutor argued that the complainant's preliminary examination testimony was consistent on the major points with her trial testimony as well as with her statements to the police. Defense counsel did not object to this line of argument.

---

<sup>1</sup> MCL 750.110a(2).

## II. Prosecutorial Misconduct

### A. Standard Of Review

Because Crain did not object to the prosecutor's remarks at trial, we review Crain's prosecutorial misconduct claim for plain error affecting substantial rights.<sup>2</sup>

### B. Reference To Matters Not In Evidence

Crain contends that the prosecutor's remarks were impermissible because they referred to matters not in evidence. Prosecutorial misconduct exists if an action that the prosecutor takes denies a defendant a fair trial.<sup>3</sup> The reviewing court must examine the record and evaluate the prosecutor's remarks in context, including any pertinent defense arguments.<sup>4</sup>

Regardless whether the prosecutor's comments touched on matters outside those brought out by defense counsel on cross-examination, Crain has failed to show that any alleged error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of the judicial proceedings.<sup>5</sup> First, the prosecutor presented evidence that the complainant's statements were consistent over time, as several police officers testified that she gave them a substantially similar version of events to that which she testified to at trial. Second, a police officer corroborated the complainant's identification of Crain at trial. The officer testified that the complainant identified Crain as the assailant at the apartment complex's rental office on the day following the attack. Even if the jury inferred that the complainant had identified Crain as the assailant at the preliminary examination as well, it is not clear that such an inference altered the outcome of the trial given her clear identification at trial and the officer's supporting testimony. Finally, the trial court specifically instructed the jury that counsels' argument was not evidence and therefore the jury should not consider them when determining guilt. Therefore, Crain's claim fails.

## III. Ineffective Assistance Of Counsel

### A. Standard Of Review

Whether a defendant was denied effective assistance of counsel presents a mixed question of fact and constitutional law.<sup>6</sup> We review the trial court's factual findings for clear error and review de novo its constitutional determination.<sup>7</sup>

---

<sup>2</sup> *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003).

<sup>3</sup> *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

<sup>4</sup> *Callon*, *supra* at 330.

<sup>5</sup> *Id.* at 329.

<sup>6</sup> *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002).

<sup>7</sup> *Id.*

## B. Meeting The Standard

Crain argues that counsel was ineffective for failing to object to the challenged comments by the prosecutor. Ineffective assistance of counsel exists where counsel's performance falls below an objective standard of reasonableness under prevailing professional norms, and there is a reasonable probability that but for the error the results of the proceedings would have been different.<sup>8</sup> As explained above with reference to Crain's prosecutorial misconduct claim, he has failed to show that such a reasonable probability exists in light of the evidence.

Affirmed.

/s/ Michael J. Talbot  
/s/ William C. Whitbeck  
/s/ Kathleen Jansen

---

<sup>8</sup> *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001).